THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.07.2007

CRL. REV. P. 938/2003

RAJESH KUMAR & OTHERS ...Petitioners

- versus -

STATE ...Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Dharmesh Relan
For the Respondent/State : Mr V. K. Malik
For the Complainant : Mr S. Lal

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J

1. This revision petition is directed against the order dated 10.11.2003 passed by the learned Metropolitan Magistrate whereby he did not accept the cancellation report filed by the police in respect of the case arising out of FIR No. 793/2002 under Section 304-B IPC registered at Police Station Patel Nagar. The learned Metropolitan Magistrate was of the opinion that although the offence under Section 304-B IPC was not made out, there was sufficient material on the judicial file to take cognizance of an offence under Section 306

IPC as the deceased Geeta Rani was continuously subjected to cruelty by her in-laws. Accordingly, he directed the issuance of non-bailable warrants against the accused persons, namely, Mehar Singh (father-in-law of the deceased), Rajesh Kumar (husband of the deceased) and Smt. Krishna (mother-in-law of the deceased).

2. Briefly stated the facts of the case are that on 12.12.2002 one Dharambir @ Sonu informed Police Station Patel Nagar over the phone that his cousin Geeta Rani aged about 35 years was found hanging from the ceiling fan and that she had committed suicide. This is recorded in DD No.34-A dated 12.12.2002 at 7.30 am at the said police station. Sub-Inspector Ram Phal was deputed for the purposes of inquiry. The body of the deceased Geeta Rani was sent to DDU Hospital through Constable Sukhdev Singh, where she was declared as having been brought dead. The SDM Patel Nagar conducted inquest proceedings. He recorded statements of Sunehra Singh (father of the deceased), Smt. Kamlesh (mother of the deceased), Satnam Singh and Dharambir Singh @ Sonu. The doctor, who conducted the *post mortem* on the body of the deceased, was of the opinion that the cause of death was due to hanging and that the time since death was 1-1½ days.

3. In his statement, Sh. Sunehra Singh stated that he had solemnized the marriage of her daughter Geeta Rani with Rajesh Kumar on 30.04.1998.

She remained happy at her matrimonial home for some months. But, after that her in-laws started beating her for dowry. She came to his house on 13.09.1999. In the meanwhile, she had given birth to a son, who was then 3-1/2 years old. After staying for 7-8 months in the paternal home, Geeta Rani was appointed in G. B. Pant Hospital as a Pharmacist. It is alleged that the father-in-law of Geeta Rani went there and threatened her that he had spent Rs 1 lac for obtaining a job for her after drawing money from his GPF account. He threatened that she should return to her matrimonial house on her own otherwise they would forcibly abduct her and as they were serving in the police they could easily do so. It is further alleged that on 22.04.2000 about 3/4 boys were sent to G. B. Pant Hospital to abduct Geeta Rani. In respect of this incident, the case was going on in the CAW Cell. Sh. Sunehra Singh also alleged that during this period his daughter told him that her in-laws used to threaten her repeatedly at the bus stand, at home, over the telephone and in the hospital. It is also alleged that when she had gone to Patiala House in connection with the case, accused Rajesh and Mehar Singh manhandled her and abused her. In respect of this incident an FIR under Section 341/506 IPC was registered. Sh. Sunehra Singh also stated that Rajesh Kumar also filed a divorce case which was pending in the Trial Court. He stated that cases initiated by Geeta Rani were pending in different courts. One case was under Section 498-A/406/341/506 IPC, the other case was pertaining to the divorce

proceedings and the third case was a petition for maintenance under Section 125 Cr. P.C.

4. It is further alleged in Sh. Sunehra Singh's statement that, his daughter's father-in-law (Mehar Singh) and his son-in-law (Rajesh Kumar) used to go to the hospital where she worked and threatened and teased her. This was related to him by Geeta Rani on 28.11.2002 when she had gone to Chandigarh. According to Sh. Sunehra Singh, she had become fed up and was mentally shattered and she stated that she could not bear the threats and harassment any further and that her in-laws had even threatened to kill her and kidnap her child. He stated that after hearing the above circumstances, he and his other family members pacified her and sent her to Delhi. It was alleged that she was so frightened that she was prepared to resign from her job. It was alleged that a telephone call was received on 10.12.2002 that some relative from Gali No.8 and the mother-in-law Krishna had gone and threatened Geeta Rani. According to Sh. Sunehra Singh, it was because of these threats that she committed suicide after being fed up with her in-laws.

5. Thereafter FIR No.793/2002 dated 25.12.2002 under Section 304-B IPC was registered at PS Patel Nagar. Investigation was taken up by SI Ram Phal. He, *inter alia*, recorded the statements of Smt. Kamlesh, Dharambir @

Sonu, Satnam Singh and Bhupinder Singh. The case was transferred to DIU/West and the investigation was handed over to Sh. Rajiv Rajan, ACP.

6. It must be pointed out that Sh. Sunehra Singh had filed a Criminal Writ No. 816/2003. The same was disposed of by an order dated 31.07.2003 wherein it was indicated by the standing counsel for the State that the cancellation report was being filed before the Metropolitan Magistrate. The Division Bench, while disposing of the said Criminal Writ Petition, observed that if the cancellation report is filed, the Metropolitan Magistrate would issue notice to the petitioner therein (Sunehra Singh) and after consideration of all aspects including the order passed by the High Court while dismissing the anticipatory bail application, would take a decision and if he comes to the conclusion that this is a case where further investigation should be done, he should give directions as may be necessary.

7. At this juncture, it would be relevant to note that earlier Mehar Singh and Smt. Krishna had moved an applications for anticipatory bail. The same was rejected by an order of a learned Single Judge on 06.05.2003. Since that order has some bearing on the case at hand, it would be appropriate to set out the same in full:-

"**Crl. M. No. 987/2003**

Heard.

> The case against the petitioners is that their daughter-in-law Geeta Rani, who was having strained relations with petitioners on account of her harassment and torture was living separately and was employed as a pharmacist in G. B. Pant Hospital. In spite of her living separately, she was being threatened and harassed repeatedly by petitioners and to such an extent that ultimately she took her own life by committing suicide. The petitioner No.1 is an Inspector in Delhi Police and it appears that by using his influence, he was getting the complaints filed by the deceased cancelled.
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> Even if it is said that Section 304-B IPC is not attracted as the appellant had died in her matrimonial home, Section 306 IPC would be made out. Considering the serious nature of the allegations and the facts and circumstances of the case, this Court is of the considered view that it is not a fit case for grant of anticipatory bail to the petitioners.
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> The petition stands dismissed."

8. The final report under Section 173 Cr.P.C. recommending cancellation was submitted by Mr Lal Singh, Assistant Commissioner of Police, District Investigation Unit, West District, New Delhi on 26.06.2003. The same was filed before the Metropolitan Magistrate for orders. The cancellation report indicated that neighbours were interrogated. All of them stated that the in-laws of deceased Geeta Rani never came to the rented house of the deceased. They also doubted the relationship of Sonu and Geeta Rani as they were residing in a small room and sharing one double bed and no other person was residing in that room. It was also noted in the cancellation report that Geeta Rani was residing in her rented house for 2½ -3 years before her death. Sonu

had stated in his interrogation that Geeta was upset over their illicit relationship as the neighbours were raising questions about the same. It is further noted that Sonu had apparently stated in his statement that one day he questioned Geeta as to what would happen if their relationship would become public. He stated that Geeta replied that on that day she would not see this world again. Sonu had also apparently stated that Geeta had tried to commit suicide on two earlier occasions. Once she was trying to inject herself with a deadly drug but Sonu reached on time and snatched the syringe from her. The injection container was taken by Sonu to the nearby chemist, who informed that the drug contained therein was of such a kind that if injected, the person would never wake up. In the cancellation report, it is further noted that Sonu had stated that when he returned from the chemist shop, he found a *chunni* hanging from the ceiling fan. When he enquired of the same, Geeta replied that if he would not have come, she would have committed suicide. On the basis of the aforesaid statements, it is observed in the cancellation report that the motive of suicide was very clear that Geeta committed suicide due to her illicit relationship with Sonu. Accordingly, it was opined that no offence was made out under Section 304-B IPC. It was not made out because of the following:-

(i) Geeta Rani was living separately from her in-laws in Baljit Nagar for the last three years prior to her death;

(ii) The in-laws of the deceased never visited the rented premises of the deceased;

(iii) She developed illicit relations with her cousin (Sonu);

(iv) The neighbours of the deceased were raising issues with regard to the manner in which Geeta Rani was living in a small room with her cousin Sonu;

(v) Because of the locality people raising such issues about the relationship of Geeta Rani and Sonu, she tried to commit suicide on two earlier occasions;

(vi) Geeta Rani committed suicide due to the said relationship with Sonu;

(vii) There was no dowry demand or harassment from her in-laws "soon before her death".

The decision of the Supreme Court in the case of ***Satbir Singh v. State of Punjab:*** ***2002 SCC (Cri.) 48*** was also referred to in the said cancellation report.

9. The learned Metropolitan Magistrate noted in the impugned order that the statement allegedly made by the neighbours regarding the illicit relationship between Geeta Rani and Dharambir @ Sonu had not been placed on the judicial file nor the statement of the chemist, who told Dharambir @ Sonu the nature of the drug. On the basis of this, the learned Metropolitan Magistrate concluded that it cannot be said in the facts and circumstances of the case that Geeta Rani committed suicide due to the alleged illicit

relationship. He concluded that the story put forth by the prosecution in this regard is not at all reliable.

10. The learned Metropolitan Magistrate also placed great reliance on the observations of the learned Single Judge in Crl. M. 987/2003, whereby he rejected the anticipatory bail applications of the in-laws of the deceased. While rejecting the applications, the learned Single Judge had observed (as already noted above):-

> "even if it is said that Section 304-B IPC is not attracted as the appellant had died in her matrimonial home, Section 306 IPC would be made out".

11. The learned Metropolitan Magistrate while holding that the essential ingredients of Section 304-B IPC were not made out as the element of cruelty or harassment before Geeta Rani's death was missing, in the same breath held that there was sufficient material to take cognizance of an offence under Section 306 IPC as the deceased Geeta Rani was continuously subjected to cruelty by her in-laws. The exact words used by the learned Metropolitan Magistrate are as under:-

> "Now one of the essential ingredients of Section 304-B IPC is that the deceased soon before her death was subjected to cruelty or harassed by her husband or any relative of her husband for or in connection with any demand of dowry. In the case in hand element of cruelty or harassment before her death is missing. In the statement by complainant / his wife averments in this regard are totally missing. Also it is not the grievance of the complainant that his statement was not

> properly recorded by the SDM (Patel Nagar). But in my considered opinion there is sufficient material on the judicial file to take cognizance of an offence under Section 306 IPC as the deceased Geeta Rani continuously subjected to cruelty by her in laws. As such I take cognizance of an offence under Section 306 IPC....."

12. Two key features of the order impugned herein are that (i) the learned Metropolitan Magistrate placed great reliance on the observation of the learned Single Judge with regard to the offence under Section 306 IPC having been made out; and (ii) the factum of cruelty at the hands of Geeta Rani's in-laws. Taking up the first issue, I find that the reliance on the said observation of the learned Single Judge of this Court was misplaced. It appears that the learned Single Judge when he made that observation in Crl. M. No. 9871/2003 was of the view that Geeta Rani had died in her matrimonial home. The fact of the matter is that Geeta Rani had left her matrimonial home on 13.09.1999 about three years prior to her death. She died in her own rented premises and, therefore, the conclusion that because she died in her matrimonial home offence under Section 306 IPC would be attracted, is not sustainable. This is so because she did not die in her matrimonial home, apart from other reasons. The observations made by the learned Single Judge of this Court weighed heavily with the learned Metropolitan Magistrate in coming to the conclusion that the offence under Section 306 IPC was made out. It is not known as to whether the

learned Metropolitan Magistrate would have arrived at the conclusion that he did, had this observation not been there before him.

13. With regard to the second issue, I am afraid, the learned Metropolitan Magistrate has contradicted himself. While holding that the element of cruelty or harassment prior to the death of Geeta Rani was missing, he rightly came to the conclusion that the offence under Section 304-B IPC was not made out. However, immediately thereafter, the learned Metropolitan Magistrate found that the offence under Section 306 IPC was made out because she was continuously subjected to cruelty by her in-laws. This is a contradiction in terms. For negating the offence under Section 304-B IPC, he observed that the element of cruelty / harassment was missing but while considering the offence under Section 306 IPC, he was of the view that there was continual subjection to cruelty by Geeta Rani's in-laws. It appears that this conclusion was also because of the observation of the learned Single Judge of this Court that a case under Section 306 IPC was made out. The reasoning given by the learned Metropolitan Magistrate for sustaining such a conclusion cannot be accepted as it is *ex facie* in contradiction with the statement made by him earlier in the decision.

14. For these reasons, the impugned order cannot be sustained and is liable to be set aside. But, the matter does not end here. I feel that it deserves a

re-look by the Metropolitan Magistrate without being influenced by the observations in Crl. M. No.9871/2003. Therefore, the impugned order is set aside and the matter is remanded to the Metropolitan Magistrate for a fresh examination of the cancellation report and surrounding circumstances and to pass an order after giving another opportunity to the parties. The Metropolitan Magistrate shall pass the order without being influenced by any observation in Crl. M. No.9871/2003 or in the present order.

This revision petition is allowed to the aforesaid extent.

BADAR DURREZ AHMED
(JUDGE)

July 18, 2007
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